

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2368 OF 2005

IN

PAUPER PETITION (LODG) NO.88 OF 1998

IN

SUIT NO.1196 OF 1998

Gopinath Mahadeo Koli. ...Plaintiff

VS.

The Honorary Secretary
Nandanvan Jaisalpadevi Co-op.
Hsg.Society Ltd. & others. ...Defendants

Mr.R.D.Mishra, for Plaintiff.

Mr.Tushar Goradia, for Defendant nos.1 and 2.

CORAM: D.K.DESHMUKH, J.

DATED: 16th April, 2007

P.C. :-

1. This is a notice of motion taken out by the plaintiff for restoration of the pauper petition/plaint. In the pauper petition, on 24.2.1998 a conditional order was made for removal of the office objections within the time stipulated in the order. Admittedly, the objections have not been removed and therefore, by order dated 16.3.1998 the plaint/pauper petition was dismissed. In the affidavit filed in support of the notice of motion it is stated that the objections could not be removed within the time granted because the then Advocate appearing for plaintiff did not inform him about the objections. It is stated that in the year 2005 the plaintiff asked Advocate Mr.R.D.Mishra to make inquiry about the plaint and then he learnt that the suit has been dismissed. No date as to when the plaintiff found that the suit has been dismissed, is disclosed. It is also not disclosed that, on finding that the suit has been dismissed by the Prothonotary

& Sr.Master of this Court for non removal of the office objections and the office objections were not removed because the lawyer did not inform about the office objection, why an inquiry was not made by the plaintiff with that advocate to find out as to why he did not inform the plaintiff about the objections.

2. For allowing this notice of motion, the averments in the affidavit filed in support of the notice of motion will have to be accepted. It means that the allegations that the objections were not removed because the lawyer did not inform about the objections to the plaintiff will have to be accepted. This obviously, is the allegation which is adverse to the interest of the lawyer. Neither the name of the lawyer who is responsible for not informing the plaintiff about the office objections is given nor any notice has been issued to him nor he has been joined as party to the suit. Therefore, such grave allegations obviously cannot be accepted without giving an opportunity of being heard to the lawyer.

3. In these circumstances, therefore, the

notice of motion deserves to be rejected, it is accordingly, so rejected.
